

E-296/C-89-29DISMISSING COMPLAINT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Complaint Against Proctor
Public Utilities Commission by Non-Resident
Customers

ISSUE DATE: October 17, 1989

DOCKET NO. E-296/C-89-29

ORDER DISMISSING COMPLAINT

PROCEDURAL HISTORY

On January 19, 1989, the Minnesota Public Utilities Commission (the Commission) received a formal complaint from 42 customers of the Proctor Public Utilities Commission (Proctor PUC), which is owned and operated by the City of Proctor in St. Louis County. The Complainants live in the Bayview Heights section of the City of Duluth, but receive their electric service from the Proctor PUC.

The Complainants alleged that the rates charged to non-resident customers by the Proctor PUC are unjust and discriminatory because electric rates subsidize the water system and streetlighting in the City of Proctor, services non-resident customers do not receive. The Complainants asked the Commission to reassign the Bayview Heights service area to another utility, preferably Minnesota Power which serves most of the City of Duluth or that the Commission reduce their electric rates.

On April 5, 1989, the Commission met to consider the Complaint.

On April 12, 1989, the Commission issued its ORDER FOR INVESTIGATION in this matter, directing the Minnesota Department of Public Service (Department or DPS) to investigate issues regarding service area maps and the cost of electric service provided by the Proctor PUC to its customers.

On July 31, 1989, the Department filed its Report of Investigation and Recommendation, recommending that the Commission deny the Complainants' request for a reassignment to the service area of another electric utility or for a reduction in electric rates. The DPS also recommended that the Commission Order the Proctor PUC and Minnesota Power to file a joint request for a revision of the Commission's assigned service area map of St. Louis County. The Complainants and the City of Proctor filed comments on the Report.

The Commission met on September 19, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

Jurisdiction

The Commission has jurisdiction over this matter pursuant to Minn. Stat. § 216B.17, subd. 6 (1988) which provides:

The Commission shall have to power to hear, determine and adjust complaints made against any municipally owned gas or electric utility with respect to rates and services upon petition of ten percent of the nonresident consumers of the municipally owned utility or 25 such nonresident consumers whichever is less.

Furthermore, Minn. Stat. § 216B.17 (1988) allows the commission to investigate rates upon complaint that any rate relating to the furnishing of electricity is in any respect unreasonable or unjustly discriminatory. If the Commission finds that the rates of nonresidents are unreasonable or unjustly discriminatory under Minn. Stat. § 216B.21, subd. 2 (1988), it may order a formal hearing on those rates. The Commission concludes that it has jurisdiction to hear and determine this matter as to the rates of the nonresident customers of the Proctor PUC.

Factual Background

In 1941, the Village of Proctor purchased the Proctor Water and Light Company. The Bayview Heights area of Duluth, a small portion of Midway Township and a small portion of Hermantown were part of the Proctor Water and Light System. These areas have been served by the Proctor PUC since the 1941 purchase.

In 1942, the Village of Proctor and Minnesota Power and Light Company (MP) entered into a franchise agreement which granted MP the right to serve South Proctor.

In October, 1974, the Proctor PUC and MP entered into a Supplemental Service Area Agreement (SSAA). That agreement supplemented an attached map which showed each utility's distribution lines. It stated that further extensions into the other party's designated service area would be governed by which utility was closer to the new customer. Within the Proctor City limits, the SSAA applies to a 30-50 foot line extending into the City of Proctor from South Proctor. In areas served by the Proctor PUC outside the Proctor City limits, the SSAA applies to new extensions.

In 1974, the Legislature directed that the state be divided into geographical areas, called assigned service areas, in which electric utilities would have exclusive service rights. The Legislature believed exclusive service territories were necessary to encourage the development of coordinated statewide electric service, to avoid unnecessary duplication of electric facilities, and to promote the provision of economical, efficient and adequate electric service throughout the state. Minn. Stat. § 216B.37 (1988). The Commission was to set the boundaries of these assigned service areas within twelve months of enactment of the legislation. Minn. Stat. § 216B.39, subd. 2 (1988).

On May 20, 1975, the Commission issued its Order in In the Matter of Assigned Service Areas of Electric Utilities in Aitkin, Carlton, Cook, Itasca, Koochiching, Lake and St. Louis Counties, Minnesota, Pursuant to Chapter 429, Laws of Minnesota, 1974, Docket No. USA-14. That Order determined the service area boundaries for the Proctor PUC and MP. It states at p. 6:

1. MP shall have the authority to provide electric service at retail to customers within the municipal limits of Proctor pursuant to a franchise agreement dated February 2, 1942 and a Supplemental Service Area Agreement dated October 25, 1974; and
2. The PPUC shall have the authority to provide electric service at retail within the municipal limits of Proctor in the areas not being served by MP under their franchise agreement and to customers it was serving on April 12, 1974 beyond the corporate limits of the City of Proctor within the corporate limits of the City of Duluth, Township of Midway, and Township of Herman;

The Proctor PUC filed an exception to the Commission's May 20, 1975 Order and challenged the validity of the SSAA. On rehearing before the Commission, both utilities agreed that if the SSAA were deleted from the Commission's Order, it would make no material difference in the service areas between them.

On September 27, 1975, the Commission issued its Order After Oral Argument in Docket No. USA-14. The Commission found that the Proctor PUC's exceptions did not affect service area boundaries and the Commission did not delete the SSAA from its Order. The Proctor PUC did not appeal this decision to the Courts or take any action to rescind, modify or invalidate the SSAA.

Authorization to Serve

The first issue the Commission must decide is whether the Proctor municipal electric utility is authorized to serve the Bayview Heights area.

Minn. Stat. § 216B.40 (1988) states that each electric utility has the exclusive right to provide electric service at retail to all present and future customers in its assigned service area.

The Department's report concluded that Proctor is authorized to serve the Bayview Heights area. The Commission agrees.

The Village of Proctor purchased the Proctor Water and Light Company in 1941. The Bayview

Heights area of Duluth was part of the Proctor Water and Light System. It has been served by the Proctor PUC since 1941. The franchise agreement of 1942 did not affect the service rights to Bayview Heights. The SSAA applied only to new extensions into areas served by the Proctor PUC outside the Proctor City limits.

In its May 20, 1975 Order in Docket No. USA-14 the Commission stated at p.6:

The PPUC shall have the authority to provide electric service at retail within the municipal limits of Proctor in the areas not being served by MP under their franchise agreement and to customers it was serving on April 12, 1974 beyond the corporate limits of the City of Proctor within the corporate limits of the City of Duluth, Township of Midway, and Township of Herman; (Emphasis Supplied.)

The Commission's Order After Oral Argument in Docket No. USA-14 did not change the decision quoted above. It is clear that the Bayview Heights area of Duluth is within the Proctor PUC's exclusive service territory.

The Commission acknowledges that Minn. Stat. § 216B.42 (1988) references special circumstances under which the Commission may alter exclusive service areas. They include service requested from a particular utility by a large customer (connected load of 2,000 kilowatts or more located outside municipalities), customers whose homestead is within the assigned service area of more than one utility, or through the written consent of the assigned utility.

In this case, the Complainants individually do not require a connected load of 2,000 kilowatts or more; the Bayview Heights area of Duluth does not lie within the assigned service area of more than one utility; and the Proctor PUC has not given another electric utility written consent to serve the Complainants. The Commission concludes that the Complainants do not meet the statutory requirements that allow customers to be served by an electrical supplier other than the utility assigned to their area.

After considering the factual record before it, the Commission finds that the Bayview Heights area of Duluth is within the exclusive service territory of the Proctor PUC. The Commission also finds that the Complainants do not meet the statutory requirements to receive electrical service from a utility other than the one in whose exclusive service territory they reside. The Commission will deny the Complainants request to be reassigned to the service area of another utility.

Service Area Maps

Minn. Stat. § 216B.39, subd 2 (1988) requires that the Commission keep maps that "accurately and clearly show the boundaries of the assigned service area of each electric utility." The DPS Report thoroughly addresses the maps currently on file with the Commission from the Proctor PUC and MP and details their inconsistencies. The Commission will order the Proctor PUC to work with MP to file a joint request for a revision of the Commission's assigned service area map of St. Louis County that accurately reflects their service areas.

Rates

In its April 12, 1989 Order for Investigation in this matter, the Commission found that the Complainants had presented a prima facie case of discriminatory rates which merited further investigation under Minn. Stat. § 216B.17, subd. 1 (1988).

The residents of the Bayview Heights area of Duluth pay the same electrical rates as the residents of Proctor. However, the residents of Proctor are provided services by the Proctor PUC which are not provided to the residents of Bayview Heights. These include street lighting and reduced rates for water service.

For its investigation, the DPS used cost of service criteria. The overall earnings of the Proctor utility, its required rate of return, and the costs to serve customer classes were examined. The Department found that Proctor was earning excess profits overall, but that the residential class (to which all the Complainants belong) was paying less than their cost of service.

The Department concluded that there was no basis for reducing the Complainants' rates.

The Proctor PUC agreed with the DPS recommendation not to reduce rates, but disagreed with some of the Department's methodology. The Complainants argued that its prima facie showing of discrimination had not been controverted by the DPS report.

The Commission agrees with the DPS that the rates paid by the residents of Bayview are not discriminatory. The issue before the Commission is whether the electric rates paid by the residents of Bayview are discriminatory, not whether the City of Proctor is providing a different group of services to its residents and nonresidents. The Commission finds that the DPS analysis and methodology is acceptable. It shows that the Proctor PUC's resident and nonresident customers pay exactly the same electric rate. It further shows that the cost of serving the nonresidents is the same as the cost of serving Proctor residents. The Commission makes a preliminary finding that the rates

charged to the residents of Bayview Heights are not discriminatory. However, to make the final decision on this issue the Commission relies on the Department's Class Cost of Service study which shows that the Proctor PUC's residential rates are less than the Proctor PUC's cost to serve residential customers. The Commission concludes that the Complainants' electric rates are not discriminatory and will deny their request for a rate reduction.

Finally, the Complainants expressed concern that the Proctor PUC may raise their rates in reprisal for bringing this matter to the Commission. The Complainants referenced two articles from local newspapers. The Commission notes that the Proctor PUC denies any such plans. However, the Commission wants to make it absolutely clear that this type of action is insupportable and that any rate increase proposed for Proctor PUC nonresident customers as a result of this proceeding would be seriously reviewed and could easily be found to be discriminatory.

ORDER

1. Within 30 days of the issue date of this Order, the Proctor PUC shall work in conjunction with Minnesota Power to file a joint request for a revision of the official service area map for St. Louis County on file with the Commission.
2. The Complaint filed in this matter is hereby dismissed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)